(3)

5 COURT FEE 5 RS — भारत INDIA — पाँच रुपये FIVE RUPEES

5 COURT FEE 5 RS — भारत INDIA — पाँच रुपये FIVE RUPEES

CANCELLED

**IN THE HIGH COURT OF CHHATTISGARH, BILASPUR**

**WRIT PETITION NO. 2622 /2005.**

**PETITIONERS :-**

1. **Ram Bai ,**
W/o, Not known
(Concubine)
Hridaya Ram ,
Age 50 years,

**DEFENDANT**

2. **Rajendra Prasad** ,
S/o Hridaya Ram,
Age 22 years,
Both by caste – Rajwar
By occupation – Cultivator
R/o. Village Shivnandanpur P.S. Vishrampur , Tah. Surajpur, Distt. Sarguja (C.G.)

P.R. No. 1796/05
Presented by Shri I. Ahmad Rohmi
dated 02/05/05

3. **Rupendra Jaiswal @ Kallu**
S/o Not known , Aged about 35 years,
R/o. Village Shivnandanpur , P.S. Vishrampur , Tah. Surajpur, Distt. Sarguja (C.G.)

**Versus**

**RESPONDENT**
**PLAINTIFF**

**Charitar Ram,**
**S/o Hridaya Ram**
Aged about 50 years.
By caste – Rajwa ,
By occupation – cultivator
R/o. Village Shivnandanpur
P.S. Vishrampur ,
Tah. Surajpur,
Distt. Sarguja (C.G.)

(4)

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**Writ Petition under Article 227 of the Constitution of India. for the issuance of writs/ order(s) / direction(s)**

(23)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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**आदेश पत्रक**

मामला क्रमांक W.P.2622/ सन् 2005

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|
| | **13-7-2005**<br>Heard Mr. J.A. Lohani, counsel for the petitioners on admission.<br>The petitioner has preferred this writ petition under Article 227 of the Constitution of India, questioning the legality and correctness of order dated 13-4-2005 passed by the Civil Judge, Class-I, Surajpur, whereby learned Civil Judge by allowing the application of the plaintiff held that the defendants/petitioners herein are not entitled to file written statement on account of delay in filing the same and also in contravention of the provisions of Order 8 Rule 1 of the C.P.C.<br>Brief facts leading to filing of this writ petition are that the respondent herein filed a civil suit against the petitioners herein for permanent injunction and summons of the same were served on the petitioners herein, and thereafter, the petitioners put in appearance on 14-2-2001. However, thereafter, the written statement was filed on behalf of the petitioners herein on 13-4-2005. On this, the respondent herein filed an application praying that since the defendants have not been able to file written statement within 90 days from the date of service, therefore, their right to file the written statement be closed, and if any written statement is filed that should not be accepted.<br>After hearing arguments of counsel for the parties learned Civil Judge vide the impugned order observed that the petitioners herein put their appearance on 14-2-2001, and even if that date is taken to be service of noting on the petitioners even then, they are not entitled to file written statement as per the provisions of Order 8 Rule 1 of the C.P.C. It has further been observed that on 22-11-2001, 9-1-2002, 18-2-2002, and 28-4-2003 the defendants/petitioners herein were directed to file written statement, even then they had failed to file the same.<br>Provisions of Order 8 Rule 1 of the C.P.C. envisage that | |

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

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मामला क्रमांक W.P.2622/ सन् 2005

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित — 2 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

"the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendants fails to file the written statement within the said period of thirty day, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons".

In the latest judgment in the matter of **Kailash vs. Nanhku and others** reported in **2005 AIR SCW 2346**, the Apex Court held that the provisions of Order 8 Rule 1 of the C.P.C. are not mandatory, they are directory being procedural law and the Court is empowered to extend the time beyond 90 days provided the defendant shows exceptional reasons by which he was prevented to file the written statement.

In this case, the petitioners have not moved any such application, moreover, the written statement has been filed after about four years. Therefore, I do not find any substance in this writ petition and the petitioners have not been able to make out a case for interference by this Court, as the trial Court has not committed any illegality or material irregularity in passing the impugned order, or has not exercised its jurisdiction which was not vesting with that Court, or has failed to exercise the jurisdiction which was vesting with it.

In the circumstances, the writ petition is liable to be dismissed and it is accordingly, dismissed at the admission stage itself.

Consequently, M.(W.)P. No.2143/2005 stands disposed of.

Sd/-
L.C.Bhadoo
Judge

Sonu

(पीछे देखिये)